

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

-----X
JANE DOE, LUKE LOE, RICHARD ROE, and MARY :
MOE, individually and on behalf of all others similarly :
situated, :

Plaintiffs, :

v. :

THE TRUMP CORPORATION, DONALD J. TRUMP, in :
his personal capacity, DONALD TRUMP, JR., ERIC :
TRUMP, and IVANKA TRUMP, :

Defendants. :
-----X

No. 1:18-cv-09936 (LGS)

**AFFIRMATION OF CYNTHIA CHEN IN SUPPORT OF
DEFENDANTS' MOTION TO COMPEL ARBITRATION**

I, Cynthia Chen, hereby affirm as follows:

1. I am an attorney duly admitted to practice in the State of New York and before this Court.
2. I am associated with the law firm of Spears & Imes LLP, counsel for Defendants in the above-captioned action.
3. I respectfully make this affirmation in reply to argument made by Plaintiffs in opposition to Defendants' Motion to Compel Arbitration (ECF No. 113). I have personal knowledge of the facts set forth herein based upon my participation in this case, including my receipt of correspondence between the parties' counsel in this matter.
4. On January 9, 2019, Plaintiffs provided notice of a subpoena to be issued by them to a third party ACN Opportunity, LLC ("ACN") compelling ACN to preserve evidence in this case. On January 18, 2019, Plaintiffs provided Defendants with notice of 40 additional such

subpoenas addressed to other third parties. On June 13, 2019, Plaintiffs provided Defendants with notice of one more such subpoena.

5. On January 16, 2019, Defendants provided Plaintiffs with copies of ten subpoenas addressed to friends and relations of Plaintiffs identified by Plaintiffs in the Complaint as having either encouraged Plaintiffs to become ACN Independent Business Owners or having been encouraged by Plaintiffs to become ACN Independent Business Owners or to purchase ACN goods and services. Those subpoenas direct the recipients to preserve, but not produce, certain evidence.

6. On September 10, 2019, at approximately 1:36 P.M., the Court entered a Protective Order in this case. That same day, at approximately 3:30 P.M., Defendants requested that Plaintiffs disclose their names to Defendants.

7. On September 11, 2019 at approximately 8:46 A.M., two of the four Plaintiffs disclosed their names to Defendants. At approximately 10:32 A.M., the third Plaintiff disclosed their name to Defendants. At approximately 12:50 P.M., the fourth Plaintiff disclosed their name to Defendants.

8. On September 11, 2019 at approximately 6:19 P.M., ACN advised the parties that the Protective Order entered by the Court in this case “unduly restricts ACN’s ability to exercise and enforce its own rights under the IBO Agreements, including its right to have any dispute between it and an IBO heard in arbitration.”

9. On September 25, 2019, ACN proposed changes to the Non-Disclosure Agreement under the Protective Order. Attached hereto as Exhibit A is a true and correct copy of ACN’s proposed edit to the Non-Disclosure Agreement. A true and correct copy of Plaintiffs’ response to ACN is attached hereto as Exhibit B.

10. The Protective Order bars Defendants from providing Plaintiffs' identities to ACN, so that ACN can locate Plaintiffs' IBO Agreements, until ACN has signed the Non-Disclosure Agreement under the Protective Order. (ECF No. 112 at 3.)

I affirm under penalty of perjury that the foregoing is true and correct.

Dated: September 27, 2019
New York, New York

By: /s/ Cynthia Chen
Cynthia Chen, Esq.

EXHIBIT A

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JANE DOE, LUKE LOE, RICHARD ROE,
and MARY MOE, individually and on behalf
of all others similarly situated,

Plaintiffs,

v.

THE TRUMP CORPORATION, DONALD J.
TRUMP, in his personal capacity,
DONALD TRUMP JR., ERIC TRUMP, and
IVANKA TRUMP,

Defendants.

No. 1:18-cv-09936-LGS

NON-DISCLOSURE AGREEMENT

I, _____, [on behalf of non-party ACN Opportunity, LLC \(“ACN”\)](#) acknowledge that I have read and understand the Protective Order in this action governing the non-disclosure of Confidential Discovery Material and Confidential Identity Information (together, “Protected Material”). I agree that (1) I will hold in confidence all Protected Material to the extent required by the Protective Order and agree to be bound by the terms of that Order; (2) I will use such Protected Material only for purposes of this litigation and for no other purpose whatsoever; and (3) I will take all due precautions to prevent the unauthorized or inadvertent disclosure of such Protected Material.

[Notwithstanding the foregoing, as reflected by their counter-signatures below, the parties hereby stipulate and agree that nothing in this Non-Disclosure Agreement or the Protective Order in this action shall prevent or limit ACN in any way from exercising its rights and/or pursuing all remedies available to it under its agreement\(s\), through arbitration or otherwise as required by its agreement\(s\), with any Defendant and/or any Independent Business Owner, including but not limited to any plaintiff or any putative class member in this action.](#)

By acknowledging these obligations under the Protective Order, I understand that I am submitting myself to the jurisdiction of the United States District Court for the Southern District of New York for the purpose of ~~any issue or dispute arising hereunder~~ [enforcement of the Protective Order only](#), and that my willful violation of any term of the Protective Order could subject me to punishment for contempt of court.

Dated: _____

Countersigned as to paragraph 2 above by:

Counsel for Plaintiffs:

Counsel for Defendants:

EXHIBIT B

From: [Andrew Wilson](#)
To: [Niehaus, Stephanie E.](#); [Joanna C. Hendon](#); [Andrew Kincaid](#); [Cynthia Chen](#); [Alexander Rodney](#); [Roberta Kaplan](#); [John Quinn](#); [Andrew G. Celli](#)
Cc: [Colarossi, Alice D.](#)
Subject: RE: Doe v Trump; Proposed Revised NDA for ACN
Date: Wednesday, September 25, 2019 18:18:17

Dear Stephanie,

The Court has already entered the form NDA that certain non-parties are required to sign before receiving protected information under the Protective Order. But ACN Opportunities, LLC does not need to sign that NDA to respond to the Plaintiffs' subpoena because responding to that subpoena does not require ACN to receive any protected information under the Protective Order. Nor is ACN required to sign the court-ordered NDA to mark any documents confidential that ACN produces in response to that subpoena. We look forward to receiving your written response to that subpoena.

Andrew

[O. Andrew F. Wilson](#)

Partner

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From: Niehaus, Stephanie E. <stephanie.niehaus@squirepb.com>
Sent: Wednesday, September 25, 2019 5:12 PM
To: Joanna C. Hendon <jhendon@spearsimes.com>; Andrew Kincaid <akincaid@spearsimes.com>; Cynthia Chen <cchen@spearsimes.com>; Alexander Rodney <arodney@kaplanhecker.com>; Roberta Kaplan <rkaplan@kaplanhecker.com>; John Quinn <jquinn@kaplanhecker.com>; Andrew G. Celli <acelli@ecbalaw.com>; Andrew Wilson <awilson@ecbalaw.com>
Cc: Colarossi, Alice D. <alice.colarossi@squirepb.com>
Subject: Doe v Trump; Proposed Revised NDA for ACN

Dear all:

Following up on prior discussions regarding the parties' discovery directed to non-party ACN Opportunities, LLC in this matter, we have attempted to revise the NDA to satisfy ACN's concerns with signing on to the Protective Order and producing documents pursuant to it. Please see our proposed revisions in the attached, which anticipates counter-signatures from both sides acknowledging ACN's reservation of rights and remedies. Thank you for your consideration.

Stephanie



Stephanie E. Niehaus

Partner

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